IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2070 OF 2000

1. M/s.R. Piyarelall Import & Export Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 12, Government Place (East), 1st floor, Calcutta 700 069 and inter alia a branch office at 1102, Embassy Centre, Nariman Point, Mumbai - 400 021.

2. Mrs.Usha Agarwal a Director and shareholder of Petitioner No.1 abovenamed carrying on business at 1102, Embassy Centre, Nariman Point, Mumbai - 400 021. .. Petitioners.

V/s.

1. The Union of India,

2. The Deputy Director (PP), Directorate of Plant Protection Quarantine & Storage Deptt., of Agriculture & Cooperation Ministry of Agriculture, Govt. of India, having his office at Haji Bunder Road, Sewri (E), Mumbai - 400 015.

3. The Deputy Director (ENT) Plant Quarantine & Fumingation Station having his office at Garden Reach Road, Calcutta - 700 024.

4. The Commissioner of Customs having his office at New Custom House, Ballard Estate, Mumbai - 400 038 .. Respondents.

Mr.Mohan Jaykar, Mr.Mihir Deshmukh and Ms.Neha Bhide i/b. Khaitan & Jayakar for the petitioners.

Mrs.S.V. Bharucha with Mrs.N.V. Masurkar for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 5TH MAY, 2006.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

The petitioners in this writ petition seek to challenge the constitutional validity of the Destructive Insects and Pests (Amendment and Validation) Act, 1992 (hereinafter to be referred to as 'the Validation Act, 1992). The challenge is on the ground that the Parliament has no competence to overrule a binding judicial pronouncement between the petitioners and the respondents.

2. The first petitioner M/s.R. Piyarelall Import and Export Limited is a company incorporated under the Companies Act, 1956. For the sake of convenience, we shall refer the first petitioner as 'the company'. The second petitioner is the Director and Shareholder of the company.

3. The company carries on business inter alia in the imports and sale of pulses. Around the month of September, 1991, the company imported consignments of pulses, in particular 699.668 metric tonnes of toor whole crop F.A.G. The company also imported several other consignments during the period October, 1989 to

February, 1992, details of which have been set out in Exhibit ‘A". The company was not permitted clearance of the said consignments for want of no objection certificate from the Director of Plant Protection, Quarantine and Storage, Department of Agriculture & Cooperation, Ministry of Agriculture, Government of India (respondent No.2) in terms of the provisions of Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989. Under the provisions of the Order, 1989 the company was required to pay the inspection fee for obtaining the no objection certificate. Order, 1989 was issued under Section 3(1) of the Destructive Insects and Pests Act, 1914 (hereinafter to be referred to as ‘the Act of 1914).

4. The company says that though Section 3(1) of the Act of 1914 empowers the Government of India to prohibit or regulate the import into India of any articles likely to cause infection to any crop or any insects but the said provision does not empower the Central Government to levy any inspection fee. The company filed writ petition before this Court bearing writ petition No.2987 of 1991 challenging the said levy of inspection fee. Several other writ petitions also came to be filed before this Court raising the same issue.

5. By the judgment dated 31st July, 1991, in the case of S.R.I. Roller Mills Private Limited V/s. Union of India, the Division Bench of this Court held that the levy of inspection fee under Section 3(1) of the Act of 1914 was unconstitutional and ultra vires and that the Central Government has no power to levy any inspection fee under the Act of 1914. Based on the said judgment dated 31st July, 1991, the writ petition filed by the company was also allowed on 30th September, 1991 and the levy of inspection fee was held to be unconstitutional.

6. The respondents challenged the judgment of this Court dated 31st July, 1991 in the case of S.R.I. Roller Mills Limited and also against the order dated 30th September, 1991 passed in company's matter before the Supreme Court. However, all these appeals were dismissed as infructuous in the light of the Validation Act, 1992.

7. The company has set up the case that they received a notice dated 1st August, 2000 from the Director of Plant Protection, Quarantine & Storage, Department of Agriculture & Cooperation calling upon the company to pay inspection fee of Rs.16,62,360/- for the period from October 1989 to January 1992. By another letter dated 29th August, 2000 addressed to

the company's bankers, the Director sought to encash the bank guarantees furnished by the company at the time of clearance of the goods.

8. Dissatisfied with the notice dated 1st August, 2000 calling upon the company to pay the inspection fees of Rs.16,62,360/- and communication to company's bankers for encashment of bank guarantee worth Rs.8,17,180/-, the present writ petition has been filed.

9. The counsel for the petitioners urged that the binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment, particularly in a case like this where the Validation Act, 1992 has been enacted with the sole intent to nullify the judgment and orders passed by this Court including the order dated 30th September, 1991 passed in the company's writ petition. In support of his contention, the counsel relied upon the following judgments of the Supreme Court: (i) Cauvery Water Disputes Tribunal, AIR 1992 Supreme Court 522 and (ii) S.R. Bhagwat & Others V/s. State of Mysore, AIR 1996 Supreme Court 188.

10. On the other hand, the counsel for the revenue submitted that the Validation Act, 1994 has been enacted by the Parliament within its legislative competence and the said Act does not suffer from any vice of unconstitutionality. She relied upon the judgment of the Supreme Court in the case of Gujarat Ambuja Cements Ltd. V/s. Union of India, 2005 (182) E.L.T. 33 (S.C.).

11. During the course of hearing, we invited the attention of the counsel for the parties to the following judgments of the Supreme Court: (i) Shri Prithvi Cotton Mills Ltd., etc. V/s. Broach Borough Municipality and others, AIR 1970 Supreme Court 192 (ii) The Municipal Corporation of the City of Ahmedabad and another V/s. The New Shrock Spg. and Wvg. Co. Ltd., AIR 1970 Supreme Court 1292, (iii) I.N. Saksena, R.D. Doongaji V/s. State of Madhya Pradesh, AIR 1976 Supreme Court 2250 and (iv) P. Kannadasan etc. V/s. State of Tamil Nadu and others, AIR 1996 Supreme Court 2560.

12. Accordingly, the counsel referred to these judgments as well.

13. In the case of Shri Prithvi Cotton Mills Limited, the Constitution Bench of the Supreme Court

ruled that when a legislature sets out to validate a tax declared by a Court to be illegally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The exposition of law made by the Supreme Court in para 4 of the report reads thus :

> "4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a Court to be illegally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes

> the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon Courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

14. The two Judge Bench of the Supreme Court in the case of the Municipal Corporation of the City of Ahmedabad followed the legal position laid down in Shri Prithvi Cotton Mills Limited and held that the legislatures under our Constitution have within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers, the Supreme Court exposited, the legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective. It was laid down that no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts.

15. In the case of I.N. Saksena, R.D. Doongarji, the Supreme Court laid down three tests for judging the validity of validating law. While doing so, the two tests that were laid down by a bench of 7 Judges in the case of Hari Singh V/s. Military Estate Officer, AIR 1972 Supreme Court 2205 were followed. The third test was added by the Bench. This is what was held by four Judge Bench in paragraph 23 of the report :

> "23. In Hari Singh v. Military Estate Officer, (1973) 1 SCR 515 = (AIR 1972 SC 2205) a Bench of seven learned Judges of this Court laid down that the validity of a validating law is to be judged by two tests. Firstly, whether the legislature possesses competence over the subject-matter and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law. To these we may add a third: Whether it is consistent with the provisions of Part III of the Constitution."

16. It was, thus, ruled that the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision. It may at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect

the conditions on which such decision is based. It was further held that such validating legislature which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power.

17. In the matter of Cauvery Water Disputes Tribunal, upon which strong reliance was placed by the counsel for the petitioners, the Supreme Court observed thus :

> "17. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or Tribunal.
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> The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. It is, therefore, not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order or a legislative enactment of a State which interferes with the adjudicatory process and

> adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and, therefore, ultra vires the Constitution.
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> Further, admittedly, the effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence, the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the provisions of Article 245(1) of the Constitution.
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> The Ordinance is also against the basis tenets of the rules of law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law, such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other states, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the constitution. If the power of a State to issue such an Ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation."

18. It is pertinent to notice that in the matter of Cauvery Water Disputes Tribunal, the Supreme Court also culled out the principle that the legislature can change the basis on which a decision is given by the Court and, thus, change the law in general. In

the light of the situation obtaining therein, the Supreme Court reached the conclusion that the Ordinance namely Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 nullifies the decision of the Tribunal dated 25th June, 1991 and it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution. It was also held that the Ordinance has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river.

19. In the case of S.R. Bhagwat, the Supreme Court declared Section 11(2) of the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 unconstitutional, illegal and void as it was held by the Supreme Court that the said provisions seem to do away the judgments, decrees and orders of the Court which became final against the State. Such exercise of power was held impermissible.

20. The validity of Cess and Other Taxes on Minerals (Validation) Act, 1992 was the subject matter of challenge before the Supreme Court in the case of P. Kannadasan V/s. State of Tamil Nadu. In paragraph 13 and 21 of the report, the Supreme Court

considered the matter thus :

> "13. The first submission of the learned counsel for appellants-petitioners is that by enacting the impugned Act, the Parliament has sought to annul and invalidate the decisions of this Court in India Cement (AIR 1990 SC 85) and Orissa Cement (AIR 1991 SC 1676) which it is not competent to do. It is submitted that this Court had issued a mandamus directing certain State Governments to refund the taxes and cesses collected by them under the invalid laws. Some of the States had also given undertakings to this Court to refund the taxes/cesses collected in the event of the success of appellants-petitioners. The mandamus so issued cannot be invalidated by making a law. The undertaking given by the State is binding upon it. Strong reliance is placed upon the decisions of this Court in Madan Mohan Pathak v. Union of India (1978) 3 SCR 334 : (AIR 1978 SC 803) and A. V. Nachane v. Union of India (1982) 2 SCR 246 : (AIR 1982 SC 1126). It is not possible to agree. It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., Legislature, Executive and the Judiciary. Even though the Constitution has adopted the Parliamentary form of government where the dividing line between the Legislature and the Executive becomes tin, the theory of separation of powers is till valid. Ours is also a federal form of government. The subjects in respect of which the Union and the States can make laws are separately set out in List I and List II of the Seventh Schedule to the Constitution respectively. (List III is, of course, a concurrent list). The Constitution has invested the Supreme Court and High Courts with the power to invalidate laws made by Parliament and the State legislatures transgressing the constitutional limitations. Where an Act made by a State legislature is invalidated by the Court on the ground that the State legislature was not competent to enact it, the State legislature cannot enact a law declaring that the judgment of the Court shall not operate; it cannot overrule or annul the decision of the Court. But this does not mean that the other legislature

which is competent to enact that law cannot enact that law. It can. Similarly, it is open to a legislature to alter the basis of the judgment as pointed out by this Court in Shri Prithvi Cotton Mills v. Broach Borough Municipality (1970) 1 SCR 388 : (AIR 1970 SC 192) - all the while adhering to the constitutional limitations; in such a case, the decision of the Court becomes ineffective in the sense that the basis upon which it is rendered, is changed. The new law or the amended law so made can be challenged on other grounds but not on the ground that it seeks to ineffectuate or circumvent the decision of the Court. This is what is meant by "checks and balances" inherent in a system of government incorporating the concept of separation of powers. This aspect has been repeatedly emphasised by this Court un numerous decisions commencing from Shri Prithvi Cotton Mills. Under our Constitution, neither wing is superior to the other. Each wing derives its power and jurisdiction from the Constitution. Each must operate within the sphere allotted to it. Trying to make one wing superior to other would be to introduce an imbalance in the system and a negation of the basic concept of separation of powers inherent in our system of government. Take this very case. The State legislatures enacted provisions levying cesses/taxes on minerals. They thought that they were entitled to do so by virtue of Entry 50 of List II of the Seventh Schedule and that the enactment of the M.M.R.D.Act by the Parliament and the declaration contained in Section 2 thereof did not deprive them of the legislative power conferred by the said entry. A Constitution Bench of this Court in H.R.S. Murthy upheld their stand and affirmed their belief Several years later, a larger Bench of this Court overrules H.R.S. Murthy (AIR 1965 SC 177) in India Cement (AIR 1990 SC 85) and ruled that by virtue of the declaration contained in Section 2 of the M.M.R.D. Act and the provisions of the said Act, the State legislatures are denuded of their power to levy any tax on minerals. Entry 50 in List II became practically a dead letter. Provisions in several State enactments levying cess/tax on minerals were accordingly invalidated with effect from different dates. The decisions of this Court clearly meant

that the power to levy cess/tax on minerals vested exclusively with the Parliament. Since this Court is the final arbiter on the interpretation of the Constitution, everybody was bound by the said declaration of law. In the circumstances, the Parliament stepped in and enacted the impugned law, avowedly to bail out States of the predicament aforementioned: the impugned enactments makes this objective clear beyond any doubt. At the same time, it should be noted that Parliament does not purport to clothe the State legislatures with the power which they do not possess. The Parliament had already deprived the State legislatures of the power to levy tax on minerals by making the declaration contained in Section 2 of the M.M.R.D. Act as for back as 1957. The said declaration remains intact which means that the States have no power to levy any tax or cess on minerals so long as the said declaration remains in force. The Parliament, therefore, adopted the only legislative course open to it in the circumstances. It created those very levies with retrospective effect by enacting the impugned law. Section 2(1) says that the relevant provisions of the enactments mentioned in the Schedule to the Act shall be deemed to have been enacted by Parliament on the date they were enacted by the respective legislatures and that such provisions shall be deemed to have remained in force upto 4th day of April, 1991. It is not suggested that Parliament is not competent to levy a tax or cess with retrospective effect. It is, however, suggested that the tax so levied must also be operative and effective on the date the enactment is made. There cannot be a levy which is wholly and exclusively retrospective, it is argued. We see no warrant for reading such a restriction upon the power of the Parliament. If the Parliament is empowered to make a law with retrospective effect, it is entitled to make the law effective for such anterior period as it thinks appropriate. It cannot be said that unless the levy created with retrospective effect is also kept alive on the date the law in enacted by Parliament, such a levy would be incompetent. This would amount to evolving a principle unknown to law and would also amount to creating a fetter on Parliament for which there is no base in

principle. We are also unable to see any substance in the submission that by virtue of the impugned enactment, the Parliament has tried to annul the judgments of this Court. On the contrary, the Parliament has accepted the law declared by this Court and has accordingly enacted the law itself, about whose legislative competence there can be no serious question.

21. We may mention that we have dealt with the decision in Madan Mohan Pathak (AIR 1978 SC 803) at some length because we find that it is being frequently relied upon as laying down a principle at variance with Shri Prithvi Cotton Mills (AIR 1970 SC 192) and the host of decisions affirming it. In our opinion, the effort is a futile one, as demonstrated hereinabove. Another decision rendered by one of us Suhas C. Sen, J. sitting with N.P. Singh, J. has also understood the decision in Madan Mohan Pathak in precisely the same manner. (See Comorin Match Industries (P) Limited v. State of Tamil Nadu (1996) 5 JT (SC) 167 : (1996 AIR SCW 2251). We respectfully agree with all that has been said in the said judgment with respect to the decisions in Madan Mohan Pathak and Nachane. It is needless to reproduce those observations over again here."

21. In a recent decision in the case of Gujarat Ambuja Cement Limited, the Supreme Court held thus :

"20. There cannot be any doubt that the object of these sections is to nullify the effect of this Court’s decision in Laghu Udhyog Bharati by retrospectively amending and validating provisions held to be illegal. It is a well settled principle that validation of a tax declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal (vide Prithvi Cotton Mills Ltd. v. Broach Borough Municipality : 1970 1 SCR 388; Indian Aluminium Co. & Ors. V. State of Kerala (1996) 7 SCC 637; K. Sankaran Nair v. Devaki (1996) 11 SCC 428; B. Krishna Bhat v. State of Karnataka (2001) 4

SCC 227; N.A. Cooperative Mkg. Federation v. Union of India AIR 2003 SC 1329). As a proposition of law this cannot be and is not disputed. The question is whether by enacting Sections 116 and 117 of the Finance Act, 2000 and Section 158 of the Finance Act, 2003, the bases on which this Court struck down Rule 2(1)(d), (xii) and (xvii) of the Service Tax Rules, 1994 had been displaced or removed.

21. As we read the decision in Laghu Udhyog Bharati, the basis was the patent conflict between Sections 65, 66, 68(1) and 71 of the Finance Act, 1994 as amended in 1997 on the one hand and Rules 2(1)(d) (xii) and (xvii) of the Service Tax Rules, 1994 on the other. Each of these sections of the Finance Act, 1994 as amended in 1997 proceeded on the basis that the tax was imposable on the person providing the service. All the other sections regarding the liability to furnish returns, assessments, penalties etc. flowed from that. It was because unamended Section 66 spoke of the liability to pay tax in respect of services "which are provided to any person by the person responsible for collecting the service tax" and Section 65(5) defined "assessee" as meaning "a person responsible for collecting the service tax", that this Court held that Clauses (xii) and (xvii) of Rule 2(1)(d) of the Service Tax Rules were illegal.

22. As is apparent from Section 116 of the Finance Act, 2000, all the material portions of the two Sections which were found to be incompatible with the Service Tax Rules were themselves amended so that now in the body of the Act by virtue of the amendment to the word "assessee" in Section 65(5) and the amendment to Section 66(3), the liability to pay the tax is not on the person providing the taxable service but, as far as the service provided by clearing and forwarding agents and goods transport operators are concerned, on the person who pays for the services. As far as Section 68(1A) is concerned by virtue of the proviso added in 2003, the persons availing of the services of goods transport operators or clearing and forwarding agents have explicitly been made liable to pay the service tax.

> 23. As we have said, Rule 2(1)(d) (xii) and (xvii) had been held to be illegal in Laghu Udhyog Bharati only because the charging provisions of the Act provided otherwise. Now that the charging section itself has been amended so as to make the provisions of the act and the Rules compatible, the criticism of the earlier law upheld by this Court can no longer be availed of. There is thus no question of the Finance Act, 2000 overruling the decision of this Court in Laghu Udhyog Bharati as the law itself has been changed. A legislature is competent to remove infirmities retrospectively and make any imposition of tax declared invalid, valid. This has been the uniform approach of this Court. Such exercise in validation must of course also be legislatively competent and legally sustainable. Those issues are considered separately. On the first question, we hold that the law must be taken as having always been as is now brought about by the Finance Act, 2000. The statutory foundation for the decision in Laghu Udhyog Bharati has been replaced and the decision has thereby ceased to be relevant for the purposes of construing the present provisions (vide Ujagar Prints v. Union of India). Therefore, subject to our decision on the question of the legislative competence of Parliament to enact the law, and assuming the amendments in 2003 to be legal for the time being, we reject the submission of the writ petitioners that by the amendments brought about by Sections 116 and 117 of the Finance Act 2000, the decision in Laghu Udhyog Bharati has been legislatively overruled."

22. The legal position is well settled and no more res-integra that the legislature does possess competence to make a fresh law free from unconstitutionality and then provide that anything done under the offending law shall be deemed to have been done under the new law or subject to its provisions. The legislature, though, cannot overrule

the decision, judgment and order of the competent Court by reference to legislative power but always has competence under its legislative power free from unconstitutionality to remove the basis of a decision rendered by a competent Court and thereby rendering that decision ineffective. In exercise of its powers if the legislature removes the basis of a decision rendered by a competent Court and thereby rendering that itself effective, it cannot be said that there is an attempt to inroad into the judicial powers of the State.

23. Applying the aforesaid legal position now we turn to the judgment that was delivered by this Court on 31st July, 1991 in the case of S.R.I. Roller Mills Limited and order dated 30th September, 1991 passed in the company's own case.

24. The Division Bench with reference to Section 3(1) of the Act of 1914 held that the said provision does not empower the Central Government to levy any fee or taxes in express terms. It gives power to the Central Government to prohibit or regulate the import into India likely to cause any infections to any crop. The Division Bench posed the question as to whether the power to prohibit or regulate the import into India of articles likely to cause infections to

crops includes the power to levy inspection fee. On consideration of various decisions, the Division Bench ultimately held that the power to prohibit or regulate the import of article into India likely to cause infection to crops does not include power to levy inspection fee. The writ petition filed by the company came to be disposed of in the light of the judgment delivered by the Division Bench on 31st July, 1991 in S.R.I. Roller Mills Limited.

25. The Calcutta High Court had also taken the view that the Act of 1914 does not empower the Central Government to levy any fee for inspection.

26. Faced with the decisions of the Calcutta and Bombay High Court, the Parliament considered it necessary to enable the Central Government to collect and levy fee for the services rendered for meeting the expenditure on maintaining Plant Quarantine organisations. It was thought by the Parliament that it was necessary to validate the levy and collection of fees made earlier. In the circumstances, the Parliament amended Act of 1914 by validating Act of 1992 and inserted sub-section (3) to Section 3 with retrospective effect from 27th October, 1989

27. The newly inserted provision in Section 3

reads thus :

> "(3) The Central Government may, by notification under this section, also levy and collect such fees at such rates and in such manner as may be specified therein for making an application for a permit to import, or for making inspection, fumigation, disinfection, disinfestation or supervision of, any article or class of articles or any insect or class of insects under thus section."

28. It would be, thus, seen that by inserting sub-section (3), the law was enacted enabling the Central Government to levy and collect such fees at such rates and in the manner as may be specified in the notification for making an application for a permit to import or for making inspection of any article or class of articles or any insect or class of insects under the said provision. The new provision was made applicable with retrospective effect from 27th October, 1989. The basis of the judgment by the Division Bench was that power to regulate or prohibit does not empower the Central Government to levy inspection fees. Section 3 of the Act of 1914 as was existing at that time did not provide for any specific power to the Central Government to levy and collect the inspection fee. But now that has been given by inserting sub-section (3) in Section 3. The new inserted provision has retrospective applicability. That the Central Government possess competence to enact such law is

not in dispute. What has been done by validation is that the Parliament has removed the defect that the Bombay High Court and the Calcutta High Court found in Section 3 in levy and collection of inspection fee. It is not the case of the petitioners that the amended provision is inconsistent with the provisions of Part III of the Constitution of India. All the three necessary tests as laid down by the Supreme Court in the case of I.N. Saksena, R.D. Doongarji to judge the validation of the Validating Act are satisfied. The Validation Act of 1992, therefore, cannot be said to be unconstitutional.

29. No other point was argued.

30. The writ petition, accordingly, has no merit and is dismissed. Rule is discharged. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)